BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	Rulemaking 08-08-009 (Filed August 21, 2008)

COMMENTS OF THE UNION OF CONCERNED SCIENTISTS ON POTENTIAL RENEWABLES PORTFOLIO STANDARD DEVELOPMENT IN IMPERIAL VALLEY AND EVALUATION OF RENEWABLE PROCUREMENT CONTRACTS

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I. INTRODUCTION

Pursuant to the February 3, 2009 Assigned Commissioner's Ruling Regarding Potential Renewables Portfolio Standard Development in Imperial Valley and Evaluation of Renewable Procurement Contracts ("ACR") and the February 9, 2009 Administrative Law Judge's Ruling Extending Time for Comments and Reply Comments, the Union of Concerned Scientists ("UCS") respectfully submits these comments on the issues raised in the ACR. UCS strongly supports elevating the role of project viability in renewables procurement. UCS appreciates Energy Division staff's efforts to improve the valuation and assessment of project viability in renewables procurement, and generally supports the use of transparent project viability metrics to guide Energy Division contract review and utility procurement decisions. In these comments, UCS recommends some modifications to the Energy Division Staff Proposal, and emphasizes that the best and simplest way to improve project viability and reduce the incidence of contract failure in the Renewables Portfolio Standard ("RPS") program is by ensuring that RPS compliance rules are aligned with utility incentives to pursue viable projects.

II. RPS DEVELOPMENT IN IMPERIAL VALLEY

UCS supports any actions that will effectively ensure that the Sunrise Powerlink Transmission Project is used to transmit electricity generated by RPS-eligible resources, consistent with SDG&E's commitments pursuant to Decision 08-12-058.[1] UCS supports the ACR proposals to require the respondent utilities to hold a special bidder's conference in Imperial County and to require utilities to provide information and updates on Imperial Valley RPS contracts to the Energy Division for the purpose of specific

[1] D.08-12-058 at 265.

monitoring of Imperial Valley proposals. Both of these actions are relatively simple, would not disrupt the RPS solicitation or procurement process, and could lead to more RPS development in Imperial Valley.

At this time, UCS does not have comments on the Commission's proposal to consider remedial measures in the event of insufficient approvals of Imperial Valley projects prior to the Commission's approval of 2010 RPS plans. UCS may address parties' comments on this proposal in its reply comments.

III. EVALUATION OF RENEWABLE PROCUREMENT CONTRACTS

UCS strongly supports the efforts of Energy Division staff to elevate the role of project viability in RPS procurement. Project viability has been widely identified as one of the major impediments to the success of the RPS program, and the time is ripe to examine the issue from a fresh perspective. UCS supports many elements of the Energy Division's Staff Proposal, including the application of transparent, publicly available project viability metrics to all RPS contracts. These metrics should be used to guide the Commission's review of proposed contracts and contract amendments, but Energy Division staff should not rely too heavily on the proposed Project Viability Calculator to make categorical decisions in reviewing proposed contract amendments. At this point in time, it is not clear whether sufficient publicly available information or empirical evidence is available for parties to fairly and adequately assess whether the project viability criteria proposed by staff are accurate and reliable metrics of the potential success or failure of RPS projects. Therefore, UCS recommends that Energy Division staff hold an informal workshop to define the terms in the Project Viability Calculator and provide examples of how the calculator would score various projects.

UCS believes the state should achieve RPS goals using a balanced portfolio of renewable technologies and projects, including both emerging and established technologies, and contracts with both relatively new and experienced developers. The RPS program has achieved remarkable success in supporting emerging solar technologies, but this success could soon turn into failure if a large portion of the emerging solar projects under contract ultimately fail to deliver. There is little doubt that

balance is needed; the higher risks that LSEs may incur in contracting with relatively new developers for projects using emerging technologies should be "hedged" by sufficient procurement of projects using established technologies developed by large, experienced companies.

It is not clear whether RPS procurement to date has not resulted in an appropriately balanced portfolio of projects, and UCS is concerned that utilities may be counting on too many high-risk projects to meet their RPS targets. The Commission's own analysis suggests that three of the top five barriers to RPS project development are financing availability, developer inexperience, and technology.[2] Going forward, it is essential that RPS procurement focus on obtaining deliveries from viable projects, particularly considering the risks faced by many of the projects already under contract.

Changes to the least cost-best fit ("LCBF") methodology are warranted to ensure that LSEs do not rank and select projects based on market value or price alone. Project viability should be weighted as a key factor in the bid ranking and selection process, rather than merely being used as a tie-breaker for contracts with similar prices. The LCBF methodology should explicitly allow for instances where more viable projects with higher prices are shortlisted or prioritized above less viable projects with lower prices. In addition, a utility's RPS procurement plan should include an assessment, using transparent project viability criteria, of the risks associated with its current portfolio of RPS contracts, and an analysis of any potential procurement deficits that may result from these risks. This analysis can be used to identify specific procurement needs in the next RPS solicitation.

Furthermore, the Commission should recognize that the ultimate responsibility for project viability rests primarily with load-serving entities ("LSEs"). As the procurement entities, LSEs are in the best position to judge the viability of the project bids they receive in RPS solicitations. They have the most information about project proposals, the most experience reviewing and assessing bids, and most importantly, they are the entities ultimately responsible for meeting their RPS procurement targets. While UCS supports the application of transparent project viability metrics to RPS projects and a greater

[2] California Public Utilities Commission, *Renewables Portfolio Standard Quarterly Report,* October 2008, at 8.

incorporation of project viability into the LCBF process, these changes should be made as part of a broader commitment by the Commission to strictly enforcing RPS compliance and narrowing the set of allowable conditions for utilities to defer procurement shortfalls. By making clear that the ultimate responsibility for procuring viable projects rests on LSEs, the Commission will ensure that LSEs fully internalize the risks they incur by enrolling contracts with potentially non-viable projects and that LSEs are appropriately motivated to secure enough RPS generation from viable projects to hedge against the risk that a portion of their contracts will fail.

More detailed comments on the four project viability issues identified in the ACR are provided below.

1. Changes to Rules Regarding Contract Failure

The Staff Proposal would prohibit "Category A" contracts from being eligible for earmarking for the excuse of seller non-performance.[3] UCS supports the Staff Proposal in this regard, but further recommends that seller non-performance be eliminated entirely as an acceptable condition for deferring procurement deficits. California is nearly alone among states with RPS programs in allowing LSEs to borrow deliveries from future years to meet current RPS deficits. Allowing broad excuses for borrowing from future deliveries to meet deficits does not provide appropriate incentives for LSEs to pursue contracts with viable projects.

Of the allowable reasons for deferring compliance, seller non-performance is the most problematic, because it permits compliance deferral for a factor over which a utility has at least some influence. Although a footnote to Decision 03-06-071 indicates that the allowable condition of seller non-performance "assumes that the non-performance is due to factors beyond the control of the utility,"[4] the reality is that utility decisions to purchase power from certain sellers and not from others have direct bearing on the probability of non-performance. A contract to purchase power from an inexperienced developer that has posted a low security deposit and is using an unproven technology is much more likely to fail for reasons of seller non-performance than a contract with an

[3] Attachment B to ACR at 6.
[4] D.03-06-071 at 50.

experienced developer that has posted a high security deposit and is using a proven technology. Thus, it is extremely difficult to determine whether seller non-performance is within or beyond the control of a utility. Eliminating seller non-performance as an excuse for deferring compliance would resolve this ambiguity and unequivocally align Commission rules with utility incentives to pursue the most viable projects.

2. Criteria Regarding Contract Viability and Failure

UCS supports the use of transparent criteria and metrics to assess the viability of Commission-approved RPS contracts. However, it is not clear that parties currently have sufficient information about or experience with the Project Viability Calculator proposed by Energy Division staff to evaluate whether its quantification of project viability is sufficiently objective or reflective of reality. Unless and until parties gain this level of comfort with the Project Viability Calculator, UCS recommends that project viability scores not be used to categorically limit the scope of proposed contract amendments. However, UCS supports staff's proposal to require a minimum PV score for contracts to be considered for Commission approval, and generally supports the use of transparent project viability metrics to guide and inform Energy Division decisions to approve or reject proposed contracts or proposed contract amendments. Although absolute cut-offs for contract amendments may not appropriate given the concerns that parties have expressed about the proposed Project Viability Calculator, Energy Division staff should consider all of the project viability criteria used in the calculator (and additional criteria, if appropriate) to guide its determination of whether a proposed contract amendment should be approved.

3. Changes in Rules to Ensure Viable Projects are Selected

UCS supports the elements of the Staff Proposal intended to ensure that viable projects are selected by the IOUs. All IOUs should be required to use a standardized project viability methodology, and should justify any changes to the PV calculator in their RPS procurement plans. UCS also supports requiring IOUs to provide viability assessments in public advice letters seeking approval of RPS contracts. These changes

will serve to improve the transparency of the RPS program and improve the treatment of project viability within the LCBF methodology.

In addition, UCS recommends that the Commission require the RPS procurement plans to include a risk assessment of each IOU's signed and approved contracts that are not yet online, along with a clear depiction of which contracts each IOU is counting on to reach its 20% target and an analysis of potential procurement shortfalls due to contract failure or delay. This risk assessment can rely on staff's proposed Project Viability Calculator or other standardized project viability methodology to roughly estimate the probability of timely deliveries from the RPS projects under contract. This analysis may reveal potential gaps in an IOU's RPS project portfolio. For instance, the analysis might suggest that an IOU is excessively relying on high- or medium-risk contracts delivering in 2012 to 2013 to meet its 20% target. As a logical outgrowth of this finding, the IOU's RPS procurement plan should emphasize procurement of viable projects that can provide deliveries in the years in which the IOU is most at risk for facing procurement shortfalls.

Furthermore, the LCBF process should explicitly allow for utilities to short-list projects with high viability scores even if their contract prices are higher than other short-listed projects with lower viability scores, if doing so is consistent with the identified procurement needs in the RPS procurement plan. UCS does not have a specific proposal for using project viability scores to influence LCBF bid rankings, but urges Energy Division staff to work with IOUs and other parties to develop an appropriate methodology.

4. Changes to Rules Regarding Milestones, Credit, Collateral, and Deposits

UCS supports assigning substantial weight to development security in assessing project viability. However, UCS is not convinced that a hypothetical relationship between development security and project viability scores (such as the one graphically depicted on page 3 of Attachment B to the ACR) should be used to determine the minimum level of development security required for a particular contract. As noted above, some parties have expressed concerns with the objectivity of the Project Viability Calculator, and it may not be appropriate for the outcome of a methodology that is still not fully understood to significantly influence important contract terms. Instead, it may

be more appropriate for development security to be weighted as a key criterion in assessing project viability. Under this approach, a contract in which a developer provides relatively little development security would be assessed a lower project viability score, and would therefore be less likely to be selected, but the contract would not necessarily be bound to a minimum level of development security (beyond the standard terms and conditions) because of a low viability score. Once parties gain more comfort with a standardized project viability methodology, it may be appropriate for the Commission to consider linking minimum development security requirements with project viability scores.

IV. CONCLUSION

UCS appreciates Energy Division staff's efforts to improve project viability in the RPS program, and looks forward to further collaborating with the Commission and parties to ensure the successful achievement of RPS goals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Miriam Swaffer, certify that on this date, I have caused the foregoing COMMENTS OF THE UNION OF CONCERNED SCIENTISTS ON POTENTIAL RENEWABLES PORTFOLIO STANDARD DEVELOPMENT IN IMPERIAL VALLEY AND EVALUATION OF RENEWABLE PROCUREMENT CONTRACTS to be served by electronic mail, or for any party for which an electronic mail address has not been provided, by U.S. mail on the parties listed on the service lists for the proceeding in California Public Utilities Commission Docket No. R.08-08-009.

I declare under penalty of perjury, pursuant to the laws of the State of California, that the foregoing is true and correct.

Executed on March 3, 2009, in Berkeley, California.

/ S /
Miriam Swaffer

VERIFICATION

I, Cliff Chen, am a representative of the Union of Concerned Scientists and am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters which are stated on information and belief, and as to those matters, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 3, 2009, in Berkeley, California.

/ S /
Cliff Chen